

(ii) In the event the plan is approved under § 1902.2(b), the decision shall state that the plan does not fully meet the criteria set forth in § 1902.3, and shall summarize the schedule and any other measures for bringing the plan up to the level of such criteria.

(iii) The decision shall also reflect the Assistant Secretary's intention as to continued Federal enforcement of Federal standards in areas covered by the plan. Provisions for continued Federal enforcement shall take into consideration:

(a) Whether the plan is approved under § 1902.2(a) or § 1902.2(b);

(b) The schedule for coming up to Federal standards in any § 1902.2(b) plan; and

(c) Any other relevant matters.

(2) After consideration of all relevant information contained in any written or oral comments received in any informal proceeding, if the Assistant Secretary proposes to disapprove a plan, or the disposition of a subject or issue permits the possible disapproval of a plan, he shall publish a notice to that effect, and commence a proceeding meeting the requirements of § 1902.19.

#### **§ 1902.21 Tentative decision following formal proceeding.**

(a) On the basis of the whole record of any hearing held under § 1902.14 or § 1902.19, the Assistant Secretary shall issue a tentative decision either approving or disapproving the plan. The tentative decision shall include a statement of the findings and conclusions and reasons or bases therefor on all material issues of fact, law, or discretion which have been presented. The tentative decision shall be published in the FEDERAL REGISTER.

(b) The State agency and other interested persons participating in the hearing may waive the tentative decision. In such event the Assistant Secretary shall issue a final decision under § 1902.22.

#### **§ 1902.22 Final decision following formal proceeding.**

(a) Except when interested persons participating in the hearing have waived the tentative decision under § 1902.21(b) interested persons partici-

pating in the hearing shall have an opportunity to file exceptions to a tentative decision and objections to such exceptions within periods of time to be specified in the tentative decision. An original and four copies of any exception or objections shall be filed.

(b)(1) Thereafter the Assistant Secretary shall issue a final decision ruling upon each exception and objection filed. The final decision shall be published in the FEDERAL REGISTER.

(2) Any final decision approving a plan shall contain the provisions prescribed in § 1902.20(b)(1)(iii) concerning Federal enforcement in areas covered by the plan.

#### **§ 1902.23 Publication of decisions.**

All decisions approving or disapproving a plan shall be published in the FEDERAL REGISTER.

### **Subpart D—Procedures for Determinations Under Section 18(e) of the Act**

SOURCE: 40 FR 54782, Nov. 26, 1975, unless otherwise noted.

#### **GENERAL**

#### **§ 1902.30 Purpose and scope.**

This subpart contains procedures and criteria under which the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754) will make his determination on whether to grant final approval to State plans in accordance with the provisions of section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act).

#### **§ 1902.31 Definitions.**

As used in this subpart, unless the context clearly indicates otherwise:

*Act* means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

*Affirmative 18(e) determination* means an affirmative determination under section 18(e) of the Act that the State plan or any modification thereof, is in actual operation meeting the criteria

## § 1902.32

and indices of section 18(c) of the Act and subpart B of this part so as to warrant the withdrawal of the application of discretionary Federal enforcement and standards authority from issues covered by the plan, or by any modification thereof.

*Assistant Regional Director* means the Assistant Regional Director for Occupational Safety and Health for the region in which a State is located.

*Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health.

*Commencement of a case* under section 18(e) of the Act means, for the purpose of retaining Federal jurisdiction despite an affirmative 18(e) determination, the issuance of a citation, and in the case of an imminent danger, the initiation of enforcement proceedings under section 13 of the Act.

*Commencement of plan operations* means the beginning of operations under a plan following the approval of the plan by the Assistant Secretary and in no case may be later than the effective date of the initial funding grant provided under section 23(g) of the Act.

*Development step* includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan contained in 29 CFR part 1952. A developmental step also includes those items specified in the plan as approved under section 18(c) of the Act for completion by the State, as well as those items which under the approval decision were subject to evaluations. (See e.g., approval of Colorado and Michigan plans, 38 FR 25172, 38 FR 27388, respectively), and changes deemed necessary as a result thereof to make the State program at least as effective as the Federal program within the 3 years developmental period. (See 29 CFR 1953.10(a)).

*Initial approval* means approval of a State plan, or any modification thereof, under section 18(c) of the Act and subpart C of this part.

*Person* means any individual, partnership, association, corporation, business trust, legal representative, organized group of individuals, or any agency, authority or instrumentality of the United States or of a State.

## 29 CFR Ch. XVII (7–1–01 Edition)

*Separable portion of a plan* for purposes of an 18(e) determination generally means more than one industrial, occupational or hazard grouping as defined in §1902.2(c)(1) which is administratively practicable and reasonably separable from the remainder of the plan. (See 29 CFR 1952.6(a).)

### § 1902.32 General policies.

(a) Sections 18 (e) and (f) of the Act provide for the continuing evaluation and monitoring of State plans approved under section 18(c) of the Act. The Assistant Secretary's decision whether to grant an affirmative 18(e) determination will be based, in part, on the results of these evaluations. Section 18(e) provides that a period of not less than 3 years shall have passed before the Assistant Secretary may make a determination that the State program in actual operations is applying the criteria of section 18(c) of the Act. In the case of a developmental plan, §1902.2(b) of this part requires that the Assistant Secretary must have at least one year in which to evaluate the plan's actual operations following the completion of all developmental steps specified in the plan. Thus, to be considered for an 18(e) determination, at least three years shall have passed following commencement of operations after the initial approval of a State's occupational safety and health plan by the Assistant Secretary. In the case of a developmental plan, at least one year shall have passed following the completion of all developmental steps, but, in any event, at least three years must have passed following initial approval of the plan before discretionary Federal enforcement authority and standards may be withdrawn from issues covered by an approved plan.

(b) In making an 18(e) determination, the Assistant Secretary will determine if actual operations under a State's plan, or under a separable portion of the plan, indicate that the State is applying the criteria of section 18(c) of the Act and the indices of effectiveness of subpart B of this part in a manner which renders operations under the plan "at least as effective as" operations under the Federal program in providing safe and healthful employment and places of employment within